

REMARKS / ARGUMENTS

The present application includes pending claims 1-42, all of which have been rejected. By this Amendment, claims 2-5, 7-10, 12-15, 17-20, 22-25, 27-30, 37-39, and 41 have been amended, as set forth above, to further clarify the language used in these claims and to further prosecution of the present application. The Applicant respectfully submits that the claims define patentable subject matter.

Initially, the Applicant notes that a goal of patent examination is to provide a prompt and complete examination of a patent application.

It is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the *initial review* of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel *should state all* reasons and bases for rejecting claims in the *first* Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

See Manual of Patent Examining Procedure (MPEP) § 2106(II). As such, the Applicant assumes, based on the goals of patent examination noted above, that the present Office Action has set forth “all reasons and bases” for rejecting the claims.

The Examiner asserted that the oath or declaration does not acknowledge the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 C.F.R. 1.56.

Claims 1-40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,521,910, issued to Matthews (hereinafter, Matthews). Claims 41-42 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,085,306, issued to Voldman, et al. (hereinafter, Voldman). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

I. OATH OR DECLARATION

The Examiner asserted that the oath or declaration does not acknowledge the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 C.F.R. 1.56. The Applicant is re-submitting the original declaration with proper corrections posted on page 1 of the Declaration. The Applicant submits that the objection to the Declaration should be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

II. Matthews Does Not Anticipate Claims 1-40

The Applicant first turns to the rejection of claims 1-40 under 35 U.S.C. 102(b) as being anticipated by Matthews. With regard to the anticipation rejections under 102(b) and 102(e), MPEP 2131 states that “[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” See *id.* (internal citation omitted).

A. Rejection of Independent Claim 1 under 35 U.S.C. § 102(b)

With regard to the rejection of independent claim 1 under 102(b), the Applicant submits that Matthews does not disclose or suggest at least the limitation of “aggregating messages from a physical layer of each communication band and each communication channel associated with each of a plurality of protocols in a single multi-protocol layer of the multi-band, multi-protocol network,” as recited by the Applicant in independent claim 1.

The Office Action states:

Matthews teaches a method (Title) for providing enhanced connectivity (best path, Title) in a multi-band (col. 1, lines 15-

16), multi-protocol (col. 1, lines 13-14) network, the method comprising:

aggregating (combine, col. 9, lines 37-38, and 36-39) messages from a physical layer (col. 10, line 50) of each communication band (col. 1, line 15) and each communication channel (port requests, Fig. 2) associated with each of a plurality of protocols in a single multi-protocol layer of the multi-band, multi-protocol network;

See the Office Action at pages 2-3 (emphasis added). The Applicant respectfully disagrees with the above argument, especially with the above bolded portions of the Examiner's argument. Initially, the Applicant points out that **Matthews is not related to a multi-band, multi-protocol network**. The Examiner relies for support on the following citation of Matthews:

guaranteed quality of service, and secure internetworking of packet-based LAN and WAN segments by establishing temporary connections which are protocol independent and transparent to the end systems. In addition, this invention is directed to allocating bandwidth by multiple levels of arbitration among competing devices requesting access to a bandwidth-limited shared resource

See Matthews, col. 1, lines 11-17. The Applicant is confused by the Examiner's argument as **the above citation of Matthews, as well as the remaining portions of Matthews, discloses neither a multi-band network, nor a multi-protocol network**.

The Examiner is further relying on the following citation of Matthews:

At each switch, the switch looks up in the packet the source and destination MAC addresses and combines them with the inbound (source) port to form the connection identifier. If this connection is in its table, the packet will be forwarded (switched) out the designated output port.

See Matthews, col. 9, lines 36-40. The Applicant points out that the above citation of Matthews (col. 9, lines 36-40) relates to establishing a virtual LAN or a virtual connection. See *id.* at col. 8, lines 21-40. **At the above citation (col. 9, lines 36-40), Matthews simply discloses that the connection identifier may be generated by combining the packet source and destination MAC addresses with the inbound port. The above citation of Matthews (col. 9, lines 36-40) does not disclose or suggest aggregating messages from a physical layer of each communication band and each communication channel ... into a single multi-protocol layer.**

It seems that the Examiner has only performed a word/phrase search and is pointing to specific, unrelated locations in Matthews for support. For example, the Examiner is citing col. 10, line 50 with regard to “physical layer”. However, col. 10, line 50, simply states that the device of Figure 2 is illustrated without the physical layer. **The “physical layer” appearing in col. 10, line 50 is not related to the “aggregating” of col. 9, lines 36-39.** This is yet another illustration that Matthews does not disclose or suggest aggregating messages from a physical

layer of each communication band and each communication channel ... into a single multi-protocol layer.

Therefore, the Applicant maintains that Matthews does not disclose or suggest at least the limitation of "aggregating messages from a physical layer of each communication band and each communication channel associated with each of a plurality of protocols in a single multi-protocol layer of the multi-band, multi-protocol network," as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Matthews and is allowable. Independent claims 11, 21 and 31 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11, 21 and 31 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-10, 12-20, 22-30 and 32-40

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, 21 and 31 under 35 U.S.C. § 102(b) as being anticipated by Matthews has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-10, 12-20, 22-30 and 32-40 depend from independent claims 1, 11, 21 and 31, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-10, 12-20, 22-30 and 32-40.

III. Voldman Does Not Anticipate Claims 41-42

The Applicant now turns to the rejection of claims 41-42 under 35 U.S.C. 102(e) as being anticipated by Voldman.

A. Rejection of Independent Claim 41 under 35 U.S.C. § 102(e)

With regard to the rejection of independent claim 41 under 102(e), the Applicant submits that Voldman does not disclose or suggest at least the limitation of "a multi-protocol layer above, and interfacing with, said MAC layer," as recited by the Applicant in independent claim 41.

The Office Action states:

Voldman et al. teach a system for providing enhanced connectivity in a multi-band, multi-protocol network, the system comprising:

...

multi-protocol layer above and interfacing with said MAC layer (PPP, 50-Fig. 5, and col. 9, line 15).

See the Office Action at pages 5-6. The Applicant respectfully disagrees with the above argument. Initially, the Applicant points out that Voldman is not related, and does not disclose or suggest, multi-band, multi-protocol network.

The Examiner further relies on Figure 2 of Voldman. Figure 2 of Voldman discloses a conventional protocol stack for a data-over-cable system. The Examiner has equated the Applicant's "multi-protocol layer" limitation with the PPP layer 50 of Voldman. The Applicant respectfully disagrees. **The PPP layer 50 is in fact a point-to-point ("PPP") layer 50, and it is not a multi-protocol layer. Furthermore, the PPP layer 50 is above the telephone interface 48 (as clearly disclosed in col. 9, line 15 and Figure 2 of Voldman), and it is not above the The method according to claim layer, as erroneously stated by the Examiner. In fact, as seen from Figure 2 of Voldman, the PPP layer 50 and the The method according to claim layer 44 are within the same data link layer 42.**

Therefore, the Applicant maintains that Voldman does not disclose or suggest at least the limitation of "a multi-protocol layer above, and interfacing with, said MAC layer," as recited by the Applicant in independent claim 41.

Accordingly, independent claim 41 is not anticipated by Voldman and is allowable.

B. Rejection of Dependent Claim 42

Based on at least the foregoing, the Applicant believes the rejection of independent claim 41 under 35 U.S.C. § 102(e) as being anticipated by Voldman has been overcome and requests that the rejection be withdrawn. Additionally,

Application No. 10/658,161
Reply to Office Action of June 25, 2007

claim 42 depends from independent claim 41, and is, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claim 41.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-42 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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